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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,232	07/15/2003	Christopher W. Smith	01-02a	1201
30699	7590	11/16/2005	EXAMINER	
DAYCO PRODUCTS, LLC 1 PRESTIGE PLACE MIAMISBURG, OH 45342			HOOK, JAMES F	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/621,232	<b>Applicant(s)</b> SMITH ET AL.	
	<b>Examiner</b> James F. Hook	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 August 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,8-10,27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,8-10,27 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

Based upon the first claim setting forth a single layer consisting of all one material, it is considered when dependent claims claim additional layers, that final product is a multilayer conduit, where the limitations of the single layer made of one material can only be read to cover a single layer of a multilayer tube. Any other reading of such would create a rejection under 25 USC 112, therefore the examiner will treat the claims as if no rejection under 35 USC 112 exists and that the limitations of claim 1 refer to a single layer of what can be a multilayer tube.

### ***Terminal Disclaimer***

The terminal disclaimer filed on November 19, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 6,591,871 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Specification***

The amendment filed August 30, 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "a non-conductive matrix material" is not supported by the specification where the term "matrix" never appears in the specification, and it is not clear that there is anything in the

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specification or claims that would suggest the material was a matrix material when there is no mention of another material dispersed therein that would make it a matrix material.

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 8-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the specification for the term "matrix material" and no suggestion there is a dispersed material therein which would make it a matrix material, see above objection.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, a matrix material is claimed, however, there is no further dispersed material claimed which would make the material

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a matrix material, therefore it is not clear what the term "matrix material" is referring to, and what properties or scope this limitation has thereby rendering the claim indefinite.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Pfleger (398). The patent to Pfleger discloses the recited hose for use in an application where dissipation of static charge buildup is not required comprising a tubular structure where the innermost layer 2 consists of a wall that is made of PBT through the entire thickness of layer 2, where no conductive material is added to the layer, where the material is a matrix material when considering the other additives which can be provided therein, where inherently the material itself would have the same properties when not containing conductive materials, same as applicants material without any further claim limitations to additives which give applicants material special properties.

Claims 1, 8-10, 27 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Ito (330). The reference to Ito discloses the recited tubular structure for use with fuel systems which inherently has impermeability properties where the tubular structure comprises using a polyalkylene terephthalate or naphthalate such as polybutylene terephthalate, the inner layer can be formed of a single or multiple layers where elemental carbon or carbon black can be used to provide the inner layer with static dissipating properties, and where a protective cover layer can be provided which can be made of a polyolefin such as polypropylene or polyamides such as nylons, and the use of the tube for connecting to a fuel filler funnel is considered intended use, where inherently the material itself would have the same properties when not containing conductive materials, same as applicants material without any further claim limitations to additives which give applicants material special properties.

Claims 1, 9, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Brunnhofer. The reference to Brunnhofer discloses the recited tubular structure for use with fuel systems which inherently has impereability properties where the tubular structure comprises using a polyalkylene terephthalate or naphthalate such as polybutylene terephthalate, the inner layer 1 can be formed of a single or multiple layers, and where a protective cover layer 2 can be provided which can be made of a polyolefin such as polypropylene or polyamides such as nylons, and the use of the tube for connecting to a fuel filler funnel is considered intended use, where inherently the material itself would have the same properties when not containing conductive

materials, same as applicants material without any further claim limitations to additives which give applicants material special properties.

Claims 1, 10, and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Katayama (185). The reference to Katayama discloses the recited tubular structure for use with fuel systems which inherently has impermeability properties where the tubular structure comprises using polybutylene naphthalate for a single or multiple wall structure, and the material used does not specifically require a conductive agent where the term "may contain" is used, and inherently the material itself would have the same properties when not containing conductive materials, same as applicants material without any further claim limitations to additives which give applicants material special properties.

### ***Response to Arguments***

Applicant's arguments filed August 30, 2005 have been fully considered but they are not persuasive. With respect to the arguments directed toward Pfleger, the claim language is not specifically limited to only a single layer structure as suggested by the arguments but rather is claiming a single tubular structure, of which the inner layer of Pfleger is a single tubular structure, using the term comprising when describing the make up of the hose does not limit such to references teaching only a single layer as applicant argues. The term consisting of is used merely to set forth what the specific material make up of the tubular layer is, but Pfleger teaches a tubular layer made of PBT and therefor it's a layer that consists of PBT as required by the claim language.

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The remaining properties of a PBT or PBN material without conductive additives are all inherent to the materials themselves and inherently the same material would have the same properties if conductive additives were not added. This argument is true for all of the references above. With respect to Ito, the same response holds as for Pfleger above where the claim language requires a single tubular structure and the layer in Ito is likewise a single tubular structure meeting the claim language for the same reasons as Pfleger above. The same is true for Brunnhofer which has the same arguments as set forth in Ito and Pfleger above. The remaining arguments are moot based upon the canceling of the claims in the amendment of August 30, 2005.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Pfleger (468) disclosing state of the art hoses.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any



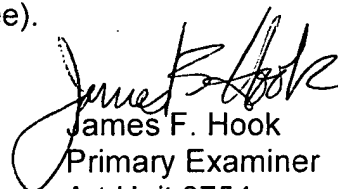
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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (571) 272-4903. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James F. Hook  
Primary Examiner  
Art Unit 3754

JFH